



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2022-0055]

### Notice of Intent to Prepare an Environmental Impact Statement for Highly Pathogenic Avian Influenza Control in the United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** We are announcing to the public that the Animal and Plant Health Inspection Service (APHIS) intends to prepare an environmental impact statement (EIS) to examine the potential environmental effects of the Agency's response activities to highly pathogenic avian influenza outbreaks in commercial and backyard poultry operations in the United States. APHIS is requesting public comment to further define the scope of the EIS, identify reasonable alternatives and potential issues, as well as relevant information, studies, and/or analyses that APHIS should consider in the EIS.

**DATES:** We will consider all comments that we receive on or before [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](https://www.regulations.gov). Enter APHIS-2022-0055 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2022-0055, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Commenters should not include any information

in their comments or supporting materials that they consider confidential or inappropriate for public disclosure.

Supporting documents and any comments we receive on this docket may be viewed at [www.regulations.gov](http://www.regulations.gov) or in our reading room, located in room 1620 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington, DC 20250. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For questions related to the HPAI response activities, contact Ms. Chelsea Bare, Chief of Staff, Veterinary Services, APHIS, USDA, 1400 Independence Avenue, SW, Whitten Building Room 318-E, Washington, DC 20250; (515) 337-6128; email: [chelsea.j.bare@usda.gov](mailto:chelsea.j.bare@usda.gov). For questions related to the EIS, contact Ms. Samantha Bates, Environmental Protection Specialist, Environmental and Risk Analysis Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737; (301) 851-3053; email: [Samantha.Bates@usda.gov](mailto:Samantha.Bates@usda.gov).

**SUPPLEMENTARY INFORMATION:**

Purpose and Need for the Proposed Action

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, poultry, and aquaculture, and for eradicating such diseases within the United States when feasible. This authority has been delegated to the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS).

Highly pathogenic avian influenza (HPAI) is an extremely infectious disease and mostly fatal to poultry.<sup>1</sup> HPAI can rapidly spread within and between domestic poultry flocks and wild bird (especially waterfowl) populations. In February 2004, the first outbreak of HPAI in the United States in 20 years occurred in Texas. From December 2014 until June 2015, there were more than 200 outbreaks of HPAI, affecting commercial and backyard flocks in the central and northwestern United States. Additional outbreaks occurred in Indiana beginning in January 2016, in Tennessee in March 2017, and in South Carolina in April 2020. In February 2022, HPAI was detected in a commercial turkey flock in Indiana. Within 9 months, the virus was confirmed in 266 commercial and 360 backyard flocks in 46 States.

VS works closely with States and the poultry industry to prevent HPAI from becoming established in the U.S. poultry population. Keeping the nation's poultry free from HPAI helps protect the poultry industry, farmers' livelihoods, the availability of poultry for U.S. consumers, international trade, the health of wild birds, and the health of people who are in close, regular contact with birds (note that the risk of HPAI infections in humans is low).

APHIS is planning to prepare an environmental impact statement (EIS) to examine the potential environmental effects of its HPAI outbreak response activities in commercial and backyard poultry operations in the United States. The EIS findings will be used in VS planning and decision making, as well as to inform the public about the potential environmental effects of VS' HPAI outbreak response activities. When HPAI outbreak response activities are implemented at specific locations, site-specific environmental documents may be required. If such documents are needed, APHIS may refer to information presented in the EIS in order to promptly fulfill its environmental compliance obligations during an emergency.

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<sup>1</sup> Domestic poultry that can be affected include chickens; turkeys; ring-necked pheasants; ducks; geese; common, Japanese, or bobwhite quail; Indian peafowl; chukar or grey partridge; pigeons; ostrich; and guinea fowl.

We are requesting public comment to help us identify reasonable alternatives, potential environmental effects, and any other issues APHIS could examine in the EIS. The EIS will be prepared in accordance with: (1) the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) the Council on Environmental Quality's NEPA-implementing regulations (40 CFR parts 1500-1508) in effect as of the date of this notice, (3) USDA's NEPA-implementing regulations (7 CFR part 1b), and (4) APHIS' NEPA-Implementing Procedures (7 CFR part 372).

On February 9, 2016, APHIS published a notice in the *Federal Register* (81 FR 6828, Docket No. APHIS-2015-0058)<sup>2</sup> announcing the availability of a December 2015 final environmental assessment (EA) titled "High Pathogenicity Avian Influenza Control in Commercial Poultry Operations—A National Approach" and a finding of no significant impact (FONSI). APHIS withdrew the EA and FONSI on July 28, 2021 (86 FR 40444-40445, Docket No. APHIS-2015-0058). In that withdrawal, we indicated that further evaluation of the approach was warranted in light of then-changing circumstances related to HPAI in the United States. APHIS published a draft EA in April 2022 to allow VS to carry out emergency HPAI outbreak response activities as a result of HPAI outbreaks in seven States at the start of 2022. A final environmental assessment for an Emergency Response for HPAI Outbreaks in Seven States and FONSI were published in September 2022.<sup>3</sup> As the current HPAI outbreak continues, VS is drafting a supplemental NEPA document to cover response activities in the other impacted States.

#### Proposed Action and Alternatives the EIS Will Consider

We have identified the following alternatives for further examination in the EIS:

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<sup>2</sup> To view the notice and supporting documents as well as subsequent related notices and their supporting documents, go to [www.regulations.gov](http://www.regulations.gov) and enter APHIS-2015-0058 in the Search field.

<sup>3</sup> To view the draft EA, final EA, comments, and the FONSI, go to [www.regulations.gov](http://www.regulations.gov) and enter APHIS-2022-0031 in the Search field.

*No action alternative.* Under the no action alternative, VS would conduct nationwide surveillance of commercial and backyard flocks to monitor for HPAI, determine whether outbreaks have occurred, monitor sites where HPAI has been detected and eradicated, and provide technical guidance upon request by an impacted State. VS would also provide indemnity (monetary payment made to a livestock owner for animal and animal products taken or destroyed to control or eradicate a disease) and financial compensation for costs incurred from disposal, cleanup, and disinfection under this alternative, as applicable. However, States, local authorities, and private partners, not VS, would be responsible for conducting and managing HPAI outbreak response activities, such as depopulating infected poultry flocks and carcass management.<sup>4</sup>

*Standard procedures alternative.* Under the standard procedures alternative, VS would conduct all activities as outlined under the no action alternative (surveillance, monitoring, guidance, and indemnity and compensation). In addition, upon request from a State, APHIS VS' assistance could include conducting and managing the following: Depopulation of infected poultry flocks (e.g., using water-based foam, carbon dioxide (CO<sub>2</sub>) and other approved gasses, ventilation shutdown plus (VSD+) heat or CO<sub>2</sub>, cervical dislocation, decapitation, captive bolt, injectable euthanasia agents, and gunshot); carcass management, including transportation, disposal (e.g., composting, burial, landfill disposal compliant with the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), rendering, incineration, open-air burning, alkaline hydrolysis, and/or anaerobic digestion); and cleaning and disinfection of equipment and infected premises. HPAI outbreak response methods would be used either singly or in combination.

*Adaptive management alternative.* Under the adaptive management alternative, the proposed action, VS could use all available HPAI outbreak response methods from the standard

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<sup>4</sup> Carcass management encompasses the transportation and disposal of carcasses, body parts, and eggs, and the cleanup and disinfection of equipment and premises after the carcasses are removed from the site. Associated materials such as unconsumed feed, bedding, manure, and other potentially contaminated debris/materials may be included.

procedures alternative, plus any new HPAI outbreak response methods or other existing methods not previously listed that become more useful due to changes in technology or in outbreak scenarios, as long as the technology is analyzed prior to use within a separate risk assessment and considered and discussed within a site-specific environmental assessment. If the risk assessment indicates that the risks to human health and the environment from the proposed outbreak response method are equal to, or less than, the risks associated with the outbreak response methods in the no action or standard procedures alternatives, the proposed nonstandard HPAI outbreak response method may be used. HPAI outbreak response methods could be used either singly or in combination.

VS recognizes that the use of a nonstandard HPAI outbreak response method would be rare, if at all. However, it is impossible to consider all nonstandard technologies that currently exist or will exist in the future. The technologies for these nonstandard outbreak response methods have several logistical issues to overcome before VS could consider their use. For example, some nonstandard HPAI outbreak response methods may not be applied in the management of large numbers of animals or carcasses, either because the technologies have low capacity or low availability. However, should there be a change in the efficiency, number, or geographic range of nonstandard technologies, it is imperative that decisionmakers have the ability to quickly identify these options, analyze resulting risks, and implement the chosen course of action for their use, as applicable.

### Summary of Potential Impacts

We have identified the following potential environmental impacts for examination in the EIS. We are requesting that the public comment on these potential impacts during the scoping period. They are impacts on: Soil, air, and water quality; humans (including effects on health and safety; agricultural lands; industries and the economy; public perception; cultural and historic resources; equity and environmental justice; children's health; and Tribes); and wildlife and plant populations, especially birds of conservation concern, eagles, and threatened and

endangered species. Additionally, we request comment on the potential impacts of climate change on HPAI outbreak response activities, as well as possible impacts of the HPAI outbreak response activities on climate change.

Comments that identify other alternatives or issues that could be considered for examination in the EIS would be especially helpful. All comments received during the scoping period will be carefully considered in developing the final scope of the EIS.

#### Anticipated Permits and Authorizations

Various Federal, State, and local authorizations, permits, and consultations may be required for the proposed alternative. Anticipated permits, authorizations, and consultations may include, but are not limited to, the following: USDA permits/authorization for movement of materials into or out of control areas, including USDA permits for transportation of HPAI-infected poultry carcasses or products off-site; State permits for various depopulation, disposal, and clean-up options; Tribal consultations; Endangered Species Act section 7 consultation; and, if necessary, consultation under the National Historic Preservation Act.

#### Schedule for the Decision-Making Process

APHIS will consider comments submitted in response to this notice of intent (NOI) when analyzing the potential impacts of the proposed alternatives for development of the draft EIS. Following completion of the draft EIS, APHIS will publish a notice of availability and request for public comments. APHIS expects to make the draft EIS available for public review and comment by November 2023. After the 45-day public review and comment period, APHIS will revise the draft EIS, as appropriate, and complete the final EIS. APHIS anticipates that the final EIS will be made available to the public by October 30, 2024. A record of decision will be issued no sooner than 30 days after the final EIS is released in accordance with 40 CFR 1506.11, but no later than December 1, 2024.

#### Public Scoping Process

This NOI initiates the public scoping process and will help guide the analysis. APHIS seeks public comment on this NOI to help identify potential alternatives or other issues that could be considered and any relevant information, studies or analyses that APHIS should consider in evaluating the potential impacts of the proposed alternatives on the quality of the human environment. To promote informed NEPA analysis and decision making, comments should be as specific as possible and explain why the issues raised are important for consideration in the EIS.

Comments should include, where possible, references and data sources supporting the information provided in the comment. We encourage the submission of scientific data, studies, or research to support your comments and an explanation of why the scientific data, study, or research is relevant and important.

Authority: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 11th day of January 2023.

**Anthony Shea,**

*Administrator,*

*Animal and Plant Health Inspection Service.*

[FR Doc. 2023-00884 Filed: 1/17/2023 8:45 am; Publication Date: 1/18/2023]